

# **Board of Vocational Nursing and Psychiatric Technicians**

## ***INITIAL STATEMENT OF REASONS***

**Hearing Date:** December 30, 2003

### **Subject Matter of Proposed Regulations:**

Performance Standards; Mandatory Reporting; Citations and Fines; Consumer Complaint Disclosure Policy; and Requirements for School Programs (i.e., Relative to Procedures for Accreditation, Faculty Qualifications, Curriculum Hours, Curriculum Content, Clinical Experience, and Clinical Preceptorships)

### **Sections Affected:**

Vocational Nursing (VN):	Adopt Sections 2520.4, 2520.5 and 2524.1 Amend Sections 2518.6, 2523, 2523.1, 2523.2, 2523.4, 2523.5, 2523.6., 2526, 2529, 2532, 2533 and 2534
Psychiatric Technician (PT):	Adopt Sections 2577.5, 2577.6 and 2579.11 Amend Sections 2576.6, 2579.2, 2579.3, 2579.4, 2579.6, 2579.7, 2579.8., 2581, 2584, 2586, 2587, 2588 and 2588.1

<b>Performance Standards, Mandatory Reporting and Citation &amp; Fines</b>
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### **Amend Sections 2518.6 (VN); 2576.6 (PT) Performance Standards**

Existing language specifies performance standards for licensed vocational nurses and psychiatric technicians. As set forth therein, licensees are required to report to the Board unprofessional conduct as defined in Business and Professions Code Sections 2878 (a) and 4521(a).

New statutory language set forth in Senate Bill 358 requires licensed vocational nurses and psychiatric technicians to report the commission of any act prohibited by Sections 2878 and 4521 of the Business and Professions Code and to cooperate with the Board in the investigation of those acts. The proposed amendments make specific the reporting of those acts as a performance standard.

### **Adopt Sections 2520.4 (VN); 2577.5 (PT) Licensee Mandatory Reporting**

Pursuant to new statutory requirements set forth in Senate Bill 358, the proposed regulatory language specifies that failure by a licensed vocational nurse or psychiatric technician to report instances of unprofessional conduct within 30 calendar days by another person constitutes unprofessional conduct.

### **Adopt Sections 2520.5 (VN); 2577.6 (PT) Employer Mandatory Reporting**

Pursuant to new statutory requirements set forth in Senate Bill 358, the proposed regulatory language specifies that failure by employers of licensed vocational nurses and psychiatric technicians to report to the Board the suspension or termination, for cause, of a licensed vocational nurse or a psychiatric technician within 30 calendar days constitutes a violation.

### **Amend Sections 2523(VN); 2579.2 (PT) Citations and Fines – Content and Service**

Existing regulatory language authorizes the executive officer to issue citations to licensed vocational nurses and psychiatric technicians. Pursuant to the new statutory requirements set forth in Senate Bill 358, the proposed amendments authorize the issuance of citations to employers of licensed vocational nurses and psychiatric technicians for failure to report the suspension or termination of a licensee for cause.

### **Amend Sections 2523.1 (VN); 2579.3 (PT) Exceptions**

Existing regulatory language sets forth violations for which citations may not be issued. These exceptions include violations involving unprofessional conduct related to controlled substances, dangerous drugs, and convictions for which sufficient evidence of rehabilitation has not been demonstrated. Some of these violations are not of a gravity that would warrant formal disciplinary action (suspension, revocation or probation of a license). Examples include, but are not limited to, precharting the administration of a controlled substance or a single instance in which the licensee failed to document the effect of an administered controlled drug or failed to document the route by which a prescribed anti-psychotic medication was administered.

The proposed amendments delete these exceptions to facilitate a more expeditious and cost-effective resolution of violations that do not warrant formal disciplinary action or civil or criminal action by the district attorney or the Attorney General.

### **Amend Sections 2523.2 (VN); 2579.4 (PT) Violation Classifications**

Existing regulatory language establishes two classes of citations for licensed vocational nurses and psychiatric technicians. Additionally, existing language specifies criteria that must be considered in determining the class of a citation.

Pursuant to new statutory requirements set forth in Senate Bill 358, the proposed regulatory language establishes a third classification of citation that may be issued to employers of licensed vocational nurses and psychiatric technicians. Additionally, the criteria to be considered in determining the class of citation is modified to include evidence that the licensee or employer failed to report acts as required by the new statute. Grammatical changes are also made.

### **Amend Sections 2523.4 (VN); 2579.6 (PT) Criteria to be Considered in Assessing a Fine**

Existing regulatory language sets forth criteria to be considered in determining the amount of fine to be assessed. Pursuant to new statutory requirements set forth in Senate Bill 358, the proposed regulatory language adds employers of licensed vocational nurses and psychiatric technicians. Grammatical changes are also made.

### **Amend Sections 2523.5 (VN); 2579.7 (PT) Contested Citations**

Existing regulatory language delineates the procedure that must be followed when an issued citation is contested by a licensed vocational nurse or psychiatric technician. Pursuant to new statutory requirements set forth in Senate Bill 358, the proposed regulatory language adds employers of licensed vocational nurses and psychiatric technicians. Grammatical changes are also made.

**Amend Sections 2523.6 (VN); 2579.8 (PT) Compliance with Citation – Order of Abatement**

Existing regulations clarify procedures for compliance with citations and orders of abatement issued to licensed vocational nurses and psychiatric technicians. Pursuant to new statutory language set forth in Senate Bill 358, the proposed language adds employers of licensed vocational nurses and psychiatric technicians. Grammatical changes are also made.

**Specific Purpose:**

The specific purpose of the proposed regulations is the adoption of language necessary to implement, interpret, and make specific requirements set forth in new legislation, Chapter 640, Statutes of 2003 (SB 358, Figueroa), relative to mandatory reporting for licensed vocational nurses, psychiatric technicians, and their employers.

**Factual Basis:**

In accordance with the Business and Professions Code, the protection of the health, safety, and welfare of California consumers is the Board's highest priority. The Board is authorized to investigate allegations of unprofessional conduct and unsafe, incompetent practice by licensed vocational nurses and psychiatric technicians. If substantiated, the Board is authorized to discipline such licensees.

A significant number of licensees willfully fail to report unprofessional conduct or to respond and cooperate with investigatory requests. Such actions by licensees and the lack of reporting violations by employers pose a clear danger to the health and safety of consumers.

Recent legislation corrects this. Chapter 640, Statutes of 2003 (SB 358, Figueroa), was signed and chaptered by the Secretary of State on October 1, 2003. This new statute requires licensed vocational nurses and psychiatric technicians to report violations of the Vocational Nursing Practice Act and Psychiatric Technicians Law. Additionally, this new statute requires employers of licensed vocational nurses and psychiatric technicians to report suspensions and terminations of these licensees for cause.

<b>Consumer Complaint Disclosure Policy</b>
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**Adopt Sections 2524.1 (VN); 2579.11 (PT) Consumer Complaint Disclosure Policy**

The proposed regulation would establish the Board's "*Consumer Complaint Disclosure Policy* (Rev. 02/21/03)" in regulation by reference.

**Specific Purpose:**

The proposed regulation would ensure uniformity in the Board's policy relative to the disclosure of complaints against licensed vocational nurses and psychiatric technicians.

**Factual Basis:**

Governmental representatives, leading researchers, and client advocates have established the consumer's right to comprehensive health care by knowledgeable and competent practitioners.

Such health care requires the consumer to become an active participant in all aspects of his care. Such action has resulted in a better informed and increasingly assertive consumer.

Protection of the health, safety, and welfare of California consumers is the Board's highest priority. To ensure such protection, the Board is authorized to investigate complaints of unprofessional conduct and unsafe, incompetent practice by licensed vocational nurses and psychiatric technicians.

Pursuant to the California Government Code (Public Records Act), the public has a distinct right to access information in the government's possession; however, unconditional access is not authorized. Specific information pertaining to complaints alleging misconduct by licensees and relevant investigations are exempt from disclosure.

In February 2003, the Board adopted a revised Consumer Complaint Disclosure Policy. The policy clarifies specific information that may be disclosed relative to complaints against licensed vocational nurses and psychiatric technicians while maintaining the integrity of investigations and/or prosecutions.

### **School Program Requirements**

#### **Amend Sections 2526 (VN); 2581 (PT) Procedure for Accreditation**

##### **Specific Purpose:**

The proposed regulation amends the "Procedure for Accreditation" to clarify that alternate students for a newly admitted class may participate in class sessions until the commencement of clinical experience in clinical facilities. The regulation also mandates that each alternate student must be informed in writing of his/her alternate status.

##### **Factual Basis:**

The Board's current practice is to allow VN & PT programs to admit alternate students in each new class to replace students who drop out prior to commencement of the initial clinical experience, including skills laboratory. In allowing the admission of alternate students, the Board's intention is to enable schools to educate the maximum number of students that their resources permit. The Board currently defines "clinical experience" as that obtained under the direction of the program in a skills laboratory or actual patient care settings.

Program directors asked the Board to reconsider this regulation. Directors asked that initial skills laboratory experience be exempted from the definition of "clinical experience" relative to this regulation. It is during this initial laboratory experience that some students determine that they are not going to be able to meet the demands of the program and drop out. Allowing the alternate students to continue through this experience allows the vacated positions to be filled.

As proposed, the regulation clarifies that alternate students may participate in classes until the beginning of the students' clinical experience in clinical facilities. Once this clinical experience begins, the number of students in the class must be within the program's Board-approved class size. Further, the proposal specifies that alternate students must be informed in writing of their alternate status. Finally, the regulation limits the number of alternate students a program may enroll.

**Amend Sections 2529(VN); 2584 (PT) Faculty Qualifications**

**Specific Purpose:**

The proposed regulation amends the “Faculty Qualifications” to clarify language related to “additional faculty” in the VN & PT programs and “teaching assistants” in the PT programs.

**Factual Basis:**

It is the Board’s mandate to protect the health, safety, and welfare of California consumers. As such, the Board approves faculty in VN & PT programs based on regulatory criteria.

Additional Faculty (VN & PT) – The existing regulation states that “persons of other disciplines” may serve as “additional faculty,” and as such, may be construed to mean that nurses or psychiatric technicians are not permitted to serve as “additional faculty.”

The intent of the proposed regulation is to clarify that any person who has the qualifications to teach in a community college or a state university in California or holds a baccalaureate degree in the field related to the curriculum content taught, or meets the requirements for a vocational education credential to teach “non-nursing” courses such as Anatomy and Physiology, Pharmacology or Nutrition may serve as “additional faculty.” This would include registered nurses, licensed vocational nurses and psychiatric technicians if their educational background supports teaching one of these traditionally “non-nursing” courses.

Teacher Assistants (PT Only) – The proposed regulation amends the “Faculty Qualifications” regulation to make language parallel to related vocational nursing regulations as it references the provider classifications that may be approved as “teacher assistant” in a psychiatric technician program. Existing language in vocational nursing regulations permits registered nurses and licensed vocational nurses to be teacher assistants.

Consistent with existing vocational nursing regulations, the proposed regulation will permit registered nurses as well as psychiatric technicians to function as teacher assistants in psychiatric technician programs. The proposed amendment will correct an inadvertent omission.

**Amend Sections 2532 (VN); 2586 (PT) Curriculum Hours**

**Specific Purpose:**

The proposed regulation modifies the “Curriculum Hours” to permit 12-hour days for clinical experience.

**Factual Basis:**

Currently, the maximum length of the school day allowed by regulation is eight hours. More and more clinical facilities are using 12-hour shifts in order to more efficiently utilize nursing staff. When students are limited to a maximum of eight hours per day they have to leave the clinical area in the midst of a shift. This can be disruptive to the clinical facility’s nursing staff and can interrupt the student’s learning. In addition, student placement for clinical experience is hampered because some clinical facilities refuse to accept students if the students cannot remain in the clinical area for the full 12-hour shift.

Under the proposed regulation a 12-hour school day would be permitted for clinical experience, only. School days which consist of theory classes or a combination of theory and clinical experience may not exceed eight hours.

**Amend Sections 2533 (VN); 2587 (PT) Curriculum Content**

**Specific Purpose:**

The proposed regulation amends the language of this section to be in accord with proposed section 2529(c)(4) of the VN regulations and section 2584(c) of the PT regulations. The terms “non-nurse” and “other professional instructors” are replaced with the term “additional faculty” in the VN & PT regulations.

**Factual Basis:**

It is the Board’s mandate to protect the health, safety, and welfare of California consumers. As such, the Board approves faculty in VN & PT programs based on regulatory criteria. The proposed regulation clarifies that the courses listed in these sections may be taught by “additional faculty.”

**Amend Sections 2534 (VN); 2588 (PT) Clinical Experience**

**Specific Purpose:**

The proposed regulation deletes the requirement that a VN & PT program have prior Board approval to schedule more than 50% of clinical experience during evening hours.

**Factual Basis:**

Placement of students in the clinical area has become a challenge as clinical facilities become overburdened with work and impacted with students. Placement of students into clinical areas during evening hours has become a necessity in order for the students to get the required clinical experience.

When the original regulation was approved, patient care offered during the evening hours was much different and was less complex than that during the daytime hours. The difference limited student learning experiences. As the severity of illness of hospitalized patients has increased, care given on the day shifts and on the evening shifts has become the same. Required learning experiences can be garnered on either shift. Deleting this regulation would allow programs to use either shift to obtain clinical experiences for their students.

The deletion of this regulation would negate the need for prior Board approval of changes in clinical schedules and thus enhance a program’s ability to complete scheduling changes based on unanticipated needs of the program or clinical facility.

**Specific Purpose:**

Existing regulation specifies the general requirements for clinical preceptorships. With prior Board-approval, PT programs may offer an optional clinical preceptorship during the last nine weeks of the program.

**Factual Basis:**

This amendment corrects an inadvertent error by deleting the term “licensed vocational nurse” in the meaning of “preceptor,” and replacing it with the term “psychiatric technician.”

**UNDERLYING DATA**

Excerpt of the September 6, 2002 Board Meeting Minutes adopting the July 24, 2002 Education and Practice Committee Meeting Minutes

Excerpt of the February 21, 2003 Board Meeting Minutes adopting the February 19, 2003 Enforcement Committee Meeting Minutes

SB 358 (Figueroa, Chapter 640, Statutes of 2003) – Mandatory Reporting Requirements. Signed by Governor Gray Davis and filed with the Secretary of State’s Office on October 1, 2003. The new law becomes effective January 1, 2004.

**BUSINESS IMPACT**

The regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the premise that employers of licensed vocational nurses and psychiatric technicians will comply with the mandated reporting requirements effective January 1, 2004.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

This regulation does not mandate the use of special technologies or equipment.

**CONSIDERATION OF ALTERNATIVES**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

(11/3/2003)